IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5144 of 2006
Date of Decision: October 30, 2007

Lal Kumar .....Petitioner

Versus

Surinder Kumar Garg and another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Arun Palli, Senior Advocate with
Mr.Tusar Sharma, Advocate for the petitioner.

Mr.SP Jain, Senior Advocate with
Mr.Dheeraj Jain, Advocate for the respondents.

S. D. ANAND, J.

1. The respondents are landlords of the shop forming a part of House No.9607/5-I, situated in Guru Nanak Nagar, Gali No.4, Main Road, (Tafazzalpura) Patiala (hereinafter referred to as "the shop"). The petitioner is a tenant on that shop, on rent @ Rs.1,000/- per month plus house tax. Respondent-Surinder Garg had purchased that plot, vide a registered sale-deed, in the month of August, 1968. He received the rent from the petitioner-tenant in a previously instituted rent petition. Respondent-Usha Garg used to receive the rent of the shop in dispute from the respondent on behalf of petitioner No.1, being his wife and agent. The respondents applied for the ejectment of the petitioner from the shop on the plea of the latter being in arrears of rent and house tax w.e.f. 1.11.2000 and also on the plea of bonafide personal requirement. The averment, in the context, was that respondent-Surinder Garg, having retired as an Assistant Executive Engineer on 31.3.1999, required the premises for his own use and occupation in order to be able to start a business of sale and purchase of two-wheelers and also some other allied motor parts business.

2. The petitioner contested the averments made by the respondents and challenged the maintainability itself of the ejectment petition on an averment that respondent-Surinder Garg had sold away three shops (adjacent to the shop in dispute) on 15.10.1998, 13.1.1999 and 16.3.1999. Yet another averment made by the petitioner was that the respondents are not acting bonafide inasmuch as they want to get the shop vacated in order to be able to sell it off to someone else.

3. The learned Rent Controller allowed the ejectment plea on ground of personal necessity.

4. The finding was upheld by the learned Appellate Authority vide order dated 28.8.2006.

5. The tenant is in revision.

6. Mr.Arun Palli, learned Senior Advocate appearing for the petitioner, argued in favour of the invalidation of the orders passed by the learned Rent Controller and also the learned Appellate Authority on the following counts:

> "The respondent-landlords had not complied with the provisions of Section 13(3)(a)(c) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act"). That provision requires a landlord to apply to the Controller for an order directing the tenant to put the landlord in possession.
>
> a).....
>
> b).....
>
> c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area."

7. Instead of announcing the above certification, respondent-Surinder Garg made an averment in the petition that he had not vacated such

a building without sufficient cause "during the last two years from the presentation of the present petition.

8. In that very context, it was argued that the averment made in the course of the affidavit was to the effect that "I have not vacated any shop within the limits of Municipal Corporation, Patiala after commencement of East Punjab Urban Rent Restriction Act, 1949 without any reasonable cause." Reliance, in support of the above averment, was placed upon three sale-deeds dated 15.10.1998, 13.1.1999 and 16.3.1999, vide which the respondent-landlords had sold three shops which were under their self-occupation otherwise.

9. The pure and simple plea raised on behalf of the petitioner is that there is conspicuous absence of the indicated certification relatable to the period of commencement of the East Punjab Urban Rent Restriction Act, 1949, inasmuch as the respondent-landlord confined it to a period of two years which (rider) was not in accordance with the provisions of the Act.

10. In that very context, it is argued that the averment above quoted is factually incorrect in the light of the contents of three sale deeds dated 15.10.1998, 13.01.1999 and 16.03.1999.

11. Mr. S.P. Jain, learned Senior Advocate, appearing on behalf of the respondents, argued that the sale of three shops aforementioned is not relevant for non-suiting the respondents inasmuch as those shops fell to the share of Parveen Garg, a son of the respondents, in an oral family settlement effected in the year 1995.

12. Qua the non-compliance with the provisions of Section 13(3)(a)(c) of the Act, it was argued on behalf of the respondents that the issue relatable to the relevant plea had not been pressed before the learned Rent

Controller.

13. It may be noticed, at the very outset, that the pleadings of the respondent-landlords at the trial were conspicuous by their silence on point of the factum that the three shops aforementioned had fallen to the share of Parveen Garg in a verbal family settlement. In the absence of the plea to that effect, the averment made by respondent Surinder Garg in the course of his affidavit (filed in examination-in-chief) pales into total insignificance when examined on the touch-stone of relevance. It is obvious that evidence without there being a relevant plea cannot be taken into consideration. That plea shall stand repelled accordingly.

14. The provisions of Section 13(3)(a)(c) of the Act categorically provide that the landlord has to announce a certification that he had not vacated a building of the indicated category without sufficient cause after the commencement of the Act. In the face thereof, the endeavour made by the respondents to restrict the certification to a period of two years was illogical. Even otherwise, the copies of sale-deeds dated 15.10.1998, 13.1.1999 and 16.3.1999 indicate that three shops had been sold away by the respondent-landlords vide the aforementioned sale-deeds. There is a recital in all those sale-deeds that the possession of those shops had been handed over by the landlord-respondents to the vendees. There is no recital in the course of those documents that those shops were under the occupation of the tenant and those shops had not been got vacated from any tenant. The recitals in those sale deeds are enough to prove that the respondent-landlord had made a factually incorrect averment in the affidavit.

15. It may be pointedly noticed here that the respondent-landlords had not been able to prove that the three shops aforementioned fell to the

share of his son Parveen Garg. Those sale-deeds are proved on the record to have been executed by none-else or other than the respondent-landlords themselves. There is complete want of evidence to prove that there was any sufficient cause for the respondent-landlords to sell those shops. The onus, in the context, is to be discharged by the landlord by averring and proving the existence of sufficient cause if he had vacated a building of that category after the commencement of the Act.

16. It requires particular notice that in the course of cross-examination, respondent-landlord Surinder Garg conceded that he only signed those sale-deeds. Though he asserted that he signed those sale-deeds as those shops stood in his name and that the sale proceeds were handed over to his son Parveen Garg. No evidence in support thereof was adduced at the trial. He also conceded that he had not brought along any family partition-deed, which could show that the three shops aforementioned had fallen to the share of Parveen Garg on the date he was cross-examined in part on behalf of the petitioner.

17. The plea on behalf of the respondents that the relevant ground of challenge had not been pressed on behalf of the petitioner is inappropriate, The relevant preliminary objection (No.7) is as under:

"That the petition is not maintainable in the present form."

18. Though it cannot be disputed that the relevant issue on point of maintainability was not pressed before the learned Rent Controller, it does not adversely affect the petitioner to the extent it relates to the raising of a legal objection to the maintainability of the petition. By the very nature of things, an objection on point of law can always be raised by a party. It is the statutory law which provides that a landlord must plead that he had not

vacated such a building without sufficient cause after the commencement of this Act, in the said urban area.

19. Irrespective of the fact, whether a tenant takes up an objection in the relevant behalf or not, the pleadings of the landlords must contain the above indicated certification. As already noticed in an earlier part of this order, the only averment made by the landlords in the petition was that they had not vacated or let out any premises during the last two years from the presentation of the present petition.

20. The above discussion persuades me to hold that the respondent-landlords did not comply with the provisions of Section 13(3)(a)(c) of the Act by having refrained from issuing the indicated certification in the form of pleadings. Further, respondent-Surinder Garg is proved to have made a false deposition on oath (in the form of affidavit in lieu of examination-in-chief) that "I have not vacated any shop within the limits of Municipal Corporation, Patiala after commencement of the Act."

21. In view of the fact that the petitioner succeeds on a legal point, I do not feel called upon to go into the other part of the merits of the case.

22. In the light of foregoing discussion, this petition deserves to succeed and it shall stand allowed accordingly. Order dated 22.2.2006 passed by the learned Rent Controller shall stand set aside. The petition filed by the respondent-landlords shall stand dismissed.

(S. D. ANAND)
JUDGE

October 30, 2007
SRM/VKD

Note: Whether referred to reporter ? Yes/No